

**ALASKA STATE LEGISLATURE  
ADMINISTRATIVE REGULATION REVIEW COMMITTEE**

March 8, 2010

3:04 p.m.

**MEMBERS PRESENT**

Representative Wes Keller, Chair  
Senator Donald Olson, Vice Chair  
Representative Carl Gatto  
Representative David Guttenberg  
Senator Kevin Meyer

**MEMBERS ABSENT**

Senator Albert Kookesh

**COMMITTEE CALENDAR**

REVIEW OF REGULATIONS (18 AAC 32) RELATING TO CHEESE PRODUCTION

- HEARD

REVIEW OF REGULATIONS (11 ACC 65.010 - 11 ACC 65.900) RELATING  
TO PERSONAL USE CABIN PERMITS

- HEARD

**PREVIOUS COMMITTEE ACTION**

No previous action to record

**WITNESS REGISTER**

KRISTIN RYAN, Director  
Division of Environmental Health  
Department of Environmental Conservation (DEC)  
Anchorage, Alaska

**POSITION STATEMENT:** Discussed the proposed cheese regulations,  
18 AAC 32.

JENNIFER ANSLEY  
Far Above Rubies  
Fairbanks, Alaska

**POSITION STATEMENT:** Proposed language to create an exemption  
from the cheese regulations for home farms.

LYNNE POMEROY

Fairbanks, Alaska

**POSITION STATEMENT:** Testified in support of the proposed exemption [for home farms] in the cheese regulations.

PAUL ROBINSON, Member

Fairbanks North Star Borough Economic Development Commission

Fairbanks, Alaska

**POSITION STATEMENT:** Expressed the desire to have clear rules for cheese production.

NANCY GRAFF, Leader

North Pole Ptarmigan 4-H;

Member

Farthest North Goat Association

Fairbanks, Alaska

**POSITION STATEMENT:** Testified in support of an exemption in the cheese regulations for home dairies.

ANNETTE BRAY, President

Farthest North Goat Association

Fairbanks, Alaska

**POSITION STATEMENT:** Testified in support of an exemption in the cheese regulations for small dairies.

REPRESENTATIVE MARK NEUMAN

Alaska State Legislature

Juneau, Alaska

**POSITION STATEMENT:** Testified in support of the opportunity for the purchase of raw milk.

BERTON GORE, Doctor of Veterinary Medicine

Matanuska Creamery

Palmer, Alaska

**POSITION STATEMENT:** Expressed concerns with the proposed cheese regulations.

MICHAEL DUKES

North Pole, Alaska

**POSITION STATEMENT:** Testified in support of an exemption in the cheese regulations for small home/family farms.

MARGIE BUCKWATER

Healing Acres Goat Dairy

Palmer, Alaska

**POSITION STATEMENT:** During hearing of proposed cheese regulations, expressed concerns with regard to the proposed exemption for home farms.

DAWN NELSON

Fairbanks, Alaska

**POSITION STATEMENT:** Provided testimony on the proposed cheese regulations.

LORI LANGE

Fairbanks, Alaska

**POSITION STATEMENT:** Testified that the proposed cheese regulations seem to be unclear and confusing.

JAY FULLER, DVM, Assistant State Veterinarian

Department of Environmental Conservation

Anchorage, Alaska

**POSITION STATEMENT:** Testified on the proposed cheese regulations.

DICK MYLIUS, Director

Division of Mining, Land, & Water

Department of Natural Resources (DNR)

Anchorage, Alaska

**POSITION STATEMENT:** Provided background and answered questions regarding the regulations, 11 AAC 65.010-11 AAC 65.900, relating to personal use cabin permits.

#### **ACTION NARRATIVE**

[3:04:35 PM](#)

**CHAIR WES KELLER** called the Administrative Regulation Review Committee meeting to order at 3:04 p.m. Representatives Keller and Gatto and Senator Meyer were present at the call to order. Representative Guttenberg and Senator Olson arrived as the meeting was in process. Also in attendance was Representative Tammie Wilson.

CHAIR KELLER reminded the committee that the committee was established by AS 24.20.400 and is charged with the review of administrative regulations as they are written. He noted that over 1,500 pages of regulations are proposed every year, and therefore it's a sizable job. As part of the committee's review powers, during the interim the committee can suspend a regulation until the legislature is in session. However, during

session the committee can only promote or introduce legislation that would overturn or change regulations, if it so chooses. The committee's aim, he reminded members, is to review regulations to ensure they are constitutional and implement legislative intent as well as enable statutes that enable and give authority to the regulations.

**Review of regulations (18 AAC 32) relating to cheese production**

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CHAIR KELLER announced that the first order of business would be review of the proposed regulations, 19 AAC 32, relating to cheese production.

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The committee took an at-ease from 3:08 p.m. to 3:14 p.m.

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KRISTIN RYAN, Director, Division of Environmental Health, Department of Environmental Conservation (DEC), explained that the proposed cheese regulations amend 18 Alaska Administrative Code (AAC) 32, which are regulations that typically deal with milk, processing of milk products, and reindeer slaughter. These regulations added a new article to address cheese processing. Over the past couple of years, the division has been approached by several Alaskans who want to make cheese and sell it commercially. Previous to these regulations, there were no food safety regulations that address the processing of cheese for Alaska. She informed the committee that three permits for cheese processing in Alaska have been issued, even without the regulations technically being in place. The regulations have been implemented as the regulations have been drafted. She related her understanding that Alaska is the only state without cheese regulations.

MS. RYAN explained that bacterium pathogens are naturally occurring in the milking environment. There are several outbreaks associated with cheese and milk throughout the world that the division closely monitors in order to help determine what standards are essential to ensure safe cheese processing. When the regulations were drafted, several items were considered. Firstly, the division reviewed its statutory authority to ensure that it was within the division's legal parameters to regulate cheese processing. The department

operates under AS 17.20.005, which requires the department to adopt regulations related to food offered or sold to the public. Additionally, the department relies heavily on AS 17.20.020, which defines a food as adulterated if it contains a poisonous or deleterious substance that may render it injurious to health. Secondly, the department considered the federal rules. She related that any food product crossing a state line must comply with federal regulations. The federal government has several regulations regarding cheese production. She noted that cheese producers who sell to the military or any schools also have to comply with federal regulations. Thirdly, the department reviewed other states' regulations in order to draft the best regulations possible. She specified that, in particular, the department reviewed the regulations of Massachusetts, Maine, New York, California, Oregon, Washington, New Hampshire, Wisconsin, and Vermont. The Northeastern states were of particular interest due to the similarities in population and climate to that of Alaska.

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MS. RYAN then turned to the basic tenets of good cheese regulations. First, the milk must come from healthy animals. Second, a clean and sanitary environment is necessary. Although it's impossible to eliminate all the fecal matter from a dairy operation, the risks can be effectively reduced by adequate sanitation. Third, the processing must be adequate to kill bacteria remaining in the milk product. She pointed out that although the gold standard for processing is pasteurization, Alaska's proposed regulations as well as the federal regulations include other approved methods to minimize or eliminate the bacteria remaining in the milk. Fourth, an appropriate regulatory regime includes testing to ensure that all of the aforementioned activities are working. Ms. Ryan related that the department believes the aforementioned are the minimum standards necessary to ensure cheese in Alaska is safe for consumption. Of the three Alaska businesses that have already been permitted under these draft regulations, two of the cheese processors are small organizations with only 7 or 20 goat herds. Therefore, the department knows the standards can be achieved by a very small operation. She emphasized that a permissible operation must only be large enough to safely handle the quantities the operation wants to produce. For example, it's acceptable to use a water heater storage closet to hold cleaning products and chemicals; there doesn't necessarily have to be a separate room. Mr. Ryan said that the department has been able to permit any organization that has approached the department to

produce cheese to sell commercially. The department, she related, prides itself on its ability to provide technical assistance to ensure that [the production of cheese can occur in an affordable but safe manner] while meeting the needs of the processor. In closing, Ms. Ryan pointed out that the regulations have only been released for comment, but haven't been finalized. There have been two comment periods, which elicited many comments. The department is still reviewing the comments and there will likely be changes in response to the comments. She predicted that the comments that will be expressed today will be comments that have been heard during the public comment period, and therefore she expressed confidence that they are already part of the record.

[3:24:06 PM](#)

CHAIR KELLER inquired as to when the regulations will be formalized.

MS. RYAN said she's not sure, and added that there is no deadline. However, she estimated that they might be formalized in the next month or so.

CHAIR KELLER related that many of the comments the committee has received express concerns that the regulations are aimed at larger operations. For instance, the [draft] regulations specify that the facility must utilize public water and sewer system. He asked if the regulations include any exemptions [or variances] for smaller operations.

MS. RYAN opined that there seem to be quite a bit of misunderstanding of the regulations, and therefore the department needs to clarify the intent in the final draft of the regulations. She informed the committee that the three permits that have been granted thus far are located on private wells and septic systems. "A private well can suffice," she stated.

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REPRESENTATIVE GUTTENBERG inquired as to where Ms. Ryan foresaw the conflicts.

MS. RYAN said there are several areas. However, she opined that many of the conflicts can be corrected in the regulations. For instance, the regulations seem to read that eight separate rooms are required, but that isn't necessarily the intent. She reiterated her earlier statement regarding the ability to store

cleaning products in the bathroom. Furthermore, two of the operations currently permitted are small facilities with almost one room and small side closets.

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REPRESENTATIVE GUTTENBERG asked if, during the review of other states with cheese regulations, she found there to be a difference between large and small manufacturers.

MS. RYAN replied no, adding that the standards are scalable and meant to accommodate a small processor to a large processor. She noted that all the folks approaching the department are small processors. The same standard is being used, whether a small or large processor, primarily because the product is for human consumption.

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REPRESENTATIVE T. WILSON asked if the regulations are still out for public comment.

MS. RYAN answered that the comment period has closed. In further response, she confirmed that the public comment period for the regulations was noticed on the department's web site and posted in local newspapers of areas that the department believes there would be interest. If the department knows of people who are interested, those folks are notified. Still, she acknowledged that it's impossible to notify everyone that's interested.

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REPRESENTATIVE T. WILSON asked if the public comment will be reopened once the changes to the draft regulations are made.

MS. RYAN answered that at this point she's not sure. She explained that typically another comment period would be held if drastic changes to the regulations are made. At this point, she said she didn't know whether the regulation changes will be that significant.

[3:30:41 PM](#)

JENNIFER ANSLEY, Far Above Rubies, informed the committee that she sells goat milk soap and skin cream at the Tanana Valley Farmers' Market and at stores in Fairbanks as well as online.

Every Farmers' Market day customers ask if they can purchase milk and cheese from her. Unfortunately, such sales are illegal in Alaska even in the face of great demand for locally produced milk and cheese. Ms. Ansley said she understands DEC is concerned with safety. However, she pointed out that many of the small processors merely want the ability to sell excess milk directly to consumers. These small consumers aren't talking about going into business or operating a cheese processing plant. Ms. Ansley then proposed that the regulations include an exemption for home farms that produce less than 10 gallons of milk per day for sale and allow the farms to sell their milk or milk products directly to the consumer. She further proposed that such farms should be required to register with DEC. Alternative to the aforementioned blanket exemption, she proposed that all farms, as defined earlier, shall be allowed to sell milk and milk products directly to the consumer after registering their farm with DEC. However, an additional recommendation would be that the milk be heat treated, pasteurized, by raising the temperature of the milk to 165 degrees Fahrenheit for 15 seconds. The benefits of the aforementioned alternatives are that it doesn't cost the state any money and DEC would have records of those farms producing milk and milk products. Currently, DEC is willing to allow cow-share programs over which it has no control. Should a consumer become ill from a cow-share program, it's more difficult to trace the problem to a specific farm. Ms. Ansley then proposed a third alternative, such that the state should consider the original recommendation and the recommendation to heat treat the milk as well as that a representative from each farm shall attend an annual milk hygiene class sponsored by the cooperative extension. Of course, these classes would cost the state money.

MS. ANSLEY opined that it's important to have reasonable laws in place that allow for the safe sale of milk and milk products by local farmers. She opined that the proposals she made address public safety without imposing an untenable burden of expense and labor on home farms. She clarified that she is referring to small home farms selling directly to the consumer. The cheese regulations, she opined, are fine for larger dairies for which the purpose is the commercial sale of products to restaurants and grocery stores. Therefore, there's a big difference between large farms and home farms. She then pointed out Oregon's dairy regulations include a list of exempt activities, including the exemption to license an individual who doesn't own more than three dairy cows, doesn't advertise the milk for sale, the milk must be sold directly to the consumer at the premises where the milk is produced. Furthermore, there can't be more than two

producing dairy cows, nine producing sheep, or nine producing goats located on the premises where the milk is produced. She opined that Oregon illustrates that there are states that recognize the difference between home farms, which seek to sell extra milk, and commercial farms, which seek to make a business in cheese manufacturing.

CHAIR KELLER highlighted that the committee packet should include documentation of the Oregon law concerning milk.

[3:35:16 PM](#)

SENATOR OLSON inquired as to what other states besides Oregon have exemptions for the pasteurization of milk.

MS. ANSLEY said that she couldn't answer that at this time. However, she recalled that at one time Vermont had an exemption for small home farms, those farms that sell less than 25 quarts of milk per day.

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SENATOR OLSON inquired as to the percentage of bacteria that are killed by heat process during pasteurization.

MS. ANSLEY opined that it's understood that pasteurization at 165 degrees Fahrenheit for 15 seconds is a very effective method to destroy any bacteria in the milk. However, she pointed out that if care isn't taken after pasteurization, bacteria can begin to grow again. She noted that for the past 10 years she has given her pasteurized milk to her family and children daily and everyone is very healthy and strong. In further response, Ms. Ansley confirmed that [the pasteurization kills] the Campylobacter bacteria.

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REPRESENTATIVE GATTO asked if after pasteurization there a coliform count or is it at zero.

MS. ANSLEY said that she isn't able to answer that.

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LYNNE POMEROY began by noting that although she is part of the Farthest North Goat Association, she is speaking for herself. Ms. Pomeroy related her support for the exemption [for home

farms]. She further noted that she was raised in Oregon where she also had goats. Although she didn't sell milk in Oregon, she said she didn't see any issues with those who did.

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PAUL ROBINSON, Member, Fairbanks North Star Borough Economic Development Commission, began by informing the committee that as a member of the commission he had a role in starting this process. The commission, he related, is concerned with diversification of the community. As for him, he pointed out that [Fairbanks] has a supply chain that's several thousand miles long, but the area produces very little of what is consumed. Furthermore, there are a number of things that could potentially interrupt the supply line. Mr. Robinson then expressed his belief that sometimes the government goes too far in terms of what can and can't be done. He related that when this started, his main goal was to purchase cheese from some of his clients. This process, he indicated, has resulted in him learning a number of interesting facts. For instance, in Switzerland it's illegal to pasteurize milk for cheese because it destroys the flavor. Mr. Robinson then mentioned that perhaps DEC needs an expert on cheese.

3:40:09 PM

REPRESENTATIVE T. WILSON asked if Mr. Robinson believes an exemption [for home farms] would help.

MR. ROBINSON replied yes. He acknowledged that the cow-share program is a work around the rules, but he expressed the desire to have clear rules that everyone can follow. Since the cow-share program doesn't seem to have any regulation, he said he wasn't particularly supportive of it.

3:41:08 PM

REPRESENTATIVE GUTTENBERG asked if Mr. Paulson has reviewed regulations and found provisions that would be onerous for small farmers.

MR. ROBINSON first questioned [why this meeting is being held] if these are draft regulations. In response to the question, he identified the building [provision] as an issue as it requires nine rooms that are of a certain size, certain position of water traps, and a laboratory to test for antibiotics. Mr. Robinson expressed concern with regulations that say one thing, while the

department overlooks certain things in the regulations. Such a situation could be difficult later when there's a regime change.

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CHAIR KELLER recalled that Ms. Ryan acknowledged the significance of those who have taken the time to testify today because it could impact the regulations.

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NANCY GRAFF, Leader, North Pole Ptarmigan 4-H; Member, Farthest North Goat Association, related her support for the home dairies exemption to the cheese regulations.

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ANNETTE BRAY, President, Farthest North Goat Association, informed the committee that she has been the president of the Farthest North Goat Association for 10 years. She then related her support for an exemption for small dairies. After raising goats for 32 years and raising all her children on goat milk and cheese, it would be nice to share it with others. However, currently all her excess milk is used by the 4-H kids to feed their market animals. Since there's no profit in the aforementioned, it would be nice to have another outlet.

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REPRESENTATIVE T. WILSON inquired as to how the [home farm exemption] would impact what Ms. Bray is currently doing.

MS. BRAY answered that it would probably result in a smaller share of her milk being given to the 4-H children.

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REPRESENTATIVE MARK NEUMAN, Alaska State Legislature, informed the committee that he had introduced legislation allowing the sale of raw milk and cheese produced from raw milk. He recalled hearing of the need to have fresh milk in rural Alaska, and expressed the need for the relationship to be between a purchaser and a farmer. He further recalled hearing the belief that some of the illnesses, specifically a low immune system, being experienced today are due to the lack of ingestion of certain enzymes [in raw milk]. Representative Neuman concluded by relating his support for the opportunity to sell raw milk.

3:48:56 PM

BERTON GORE, Doctor of Veterinary Medicine, Matanuska Creamery, began by informing the committee that he is a former state veterinarian, a post at which he served for about 20-21 years. He noted that he wrote the comment section of the regulations. Dr. Gore then specified that there are two kinds of milk: Grade A for drinking and manufacturing milk for producing cheese, ice cream, and butter. Grade A milk, which is for fluid products, is highly regulated from the dairy farm to the bottle. In fact, Grade A milk is tested at the farm level four out of every six months and tested at the plant level for bacteria four out of every six months. The aforementioned allows the milk to move in interstate commerce and the milk meets the minimum federal standards. However, manufacturing milk is made at farms that aren't inspected as frequently as the Grade A farms, the bacterial limits and white blood cells are allowed to be higher. Therefore, the milk used in the states may be from manufacturing dairies that have less quality than Grade A milk. All the milk being produced in Alaska is Grade A milk, and thus the cheese being made at Mat Maid is Grade A cheese.

DR. GORE then reviewed the cheese making process. After the cheese is covered and stored, there is no mandatory testing by the Food and Drug Administration (FDA) for the food to move in interstate commerce. Therefore, the products in the stores aren't mandated to be tested like the fluid milk [and fluid milk products]. He then turned attention to proposed 18 AAC 32.350(c), which refers to the biannual testing of cheese. Although the Matanuska Creamery isn't totally opposed to the testing, he questioned why Matanuska Creamery would be subjected to an increased volume of testing when other companies shipping to Alaska don't have to meet the same standards. He pointed out that Matanuska Creamery probably sells less than 1 percent of the cheese sold in Alaska and it's being tested; however, 99 percent of the cheese coming into Alaska from the Lower 48 isn't subjected to that same testing requirement. If DEC wants to test cheese for public health reasons, then all cheese being brought into the state should meet the same criteria, he opined.

DR. GORE then directed attention to 18 AAC 32.350(b), which addresses the new product testing requirement. The provision specifies that whenever a new product is made or a product hasn't been in production in the past year, the product must be manufactured, put on hold, and then tested. Once the testing is complete, the product can be offered for sale. Again, the

aforementioned is proposed in order to address public health, and therefore he reiterated the need to treat products from Matanuska Creamery the same as products coming in from the Lower 48. Turning to 18 AAC 32.323(a), which specifies the requirement of destroying the whey, he pointed out that many products, particularly in the health food section, contain whey. Furthermore, one can purchase whey for protein at a GNC store. Whey is a human food and an animal food. Therefore, it's wrong for DEC to require it to be destroyed, he emphasized. He then turned to the appeal process. He suggested that whenever there is a disagreement over testing results, a third party should be involved in order to determine whether the appeal is valid. The last time the Matanuska Creamery made an appeal to DEC, the director told the creamery to make the appeal, and she would review it and make the final decision. He questioned how the director of a regulatory agency could make a decision that may benefit the industry. He indicated the director of a regulatory agency would "stick with their own people."

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SENATOR OLSON inquired as to the flora count after the aforementioned heat pasteurization. He also inquired as to the composition of the flora.

DR. GORE related his understanding that originally 165 degrees Fahrenheit was established to kill brucellosis and tuberculosis (TB) organisms. There are limits on pasteurized milk for bacteria after the milk has been processed at 165 degrees Fahrenheit. He opined that at that point there will likely be some coliform and other organisms that, for the most part, are non pathogens, spoilage, organisms. In further response, he related his understanding that [Alaska] hasn't ever tested for molds and viruses. Most viruses are species specific, he noted.

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DR. GORE, in response to Senator Olson, agreed that individuals who are exposed to organisms early on tend to develop a good immune system and thus are less susceptible to other infections. Those individuals with a compromised immune system are more susceptible to infections, whether they are bacterial or yeast mold viruses. He recalled when he worked for DEC that he expressed concerns that children today don't have a good immune system because everything is so clean, which wasn't well received.

3:59:33 PM

SENATOR OLSON turned to the issue of non metabolized antibiotics injected into animals from which the milk is not pasteurized or minimally pasteurized. He inquired as to how large of an issue the aforementioned is in terms of causing pathology within the general population.

DR. GORE explained that antibiotic testing of milk is done per Appendix M in the pasteurized milk ordinance. Every time a sample is picked up, it's tested for antibiotics. He recalled that additionally a sample was sent to a laboratory once a year for additional antibiotic testing. Dr. Gore pointed out that when one makes cheese, the presence of antibiotics in the milk kills the culture and a curd won't form.

4:00:47 PM

MICHAEL DUKES informed the committee that he is a member of the 4-H Club in North Pole. He then informed the committee that he recently decided to get some goats, which led to the hobby of cheese making. The plan with his goats, he related, was to consume the milk and create raw cheeses and give or sell any extra to friends or family. However, if the regulations went forward, the aforementioned would be stymied. Mr. Dukes encouraged the exemption of small home/hobby farms. The best cheeses, from what he has read, are made from unpasteurized milk. Furthermore, should anything happen to the supply line, it would nice to have consumables on hand to count on. Moreover, the intent with this endeavor is to teach his children to be self-reliant, clean and healthy, and given them a good work ethic. Although the director of DEC testified that the regulations are scalable, it's not how it reads. Furthermore, the language in the regulation is the language that will be used to judge the offender. In conclusion, Mr. Dukes encouraged the regulations to receive more public testimony, but ultimately expressed interest in having an exemption for small home/hobby farms.

4:04:02 PM

MARGIE BUCKWATER, Healing Acres Goat Dairy, informed the committee that Healing Acres Goat Dairy is one of the three permitted dairies. She explained that upon deciding to build a dairy she went to DEC and discussed exemptions necessary to proceed with the operation. The changes from the proposed regulations were placed in writing. With regard to the eight-

room requirement, she related that the testing room for the Healing Acres Goat Dairy is a three-foot square that was blocked off in a building. She expressed concern with regard to how the proposed exemption for a home farm would be kept in check. She then turned to testing and pointed out that it's not always obvious that an animal is unhealthy. Therefore, testing animals on a regular basis is important to keep control of the health of the animals. Ms. Buckwater clarified that she's not opposed to raw milk as she drinks it herself. She opined that the shares program would solve the problems attempting to be addressed by the proposed home farm exemption. Consumers, she said, should be educated, but she wasn't sure how that would be done. Ms. Buckwater said although she's not opposed to exemptions, she expressed concern regarding where the exemption would begin and end.

[4:08:23 PM](#)

REPRESENTATIVE T. WILSON inquired as to how many exemptions were necessary for Ms. Buckwater to complete her dairy.

MS. BUCKWATER specified that the length of the well to the septic was just a few feet short, which was the main exemption. She noted that the dairy isn't on a water system, which she characterized as a compromise.

[4:09:10 PM](#)

REPRESENTATIVE GUTTENBERG surmised then that Ms. Buckwater received an exemption from the municipal water requirement, the municipal sewer and waste requirement, and the distance from the well to the septic. He inquired as to what other exemptions the Healing Acres Goat Dairy received. He also inquired as to the size of Ms. Buckwater's dairy in terms of acreage and animals.

MS. BUCKWATER answered that the dairy is five acres and had 35 animals. With regard to the building, she explained that it was planned in conjunction with DEC. The building followed the measurements of the Pasteurized Milk Ordinance (PMO), albeit with a bit of leeway. For instance, the milking parlor at the Healing Acres Goat Dairy is located inside the building. Therefore, everything for the Healing Acres Goat Dairy is contained in one building.

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DAWN NELSON noted that although she is a member of the Farthest North Goat Association, she is only speaking from the position of someone who has become involved with goats via 4-H. She opined that with a 4-H project there is a need to recover some of the cost. One to two goats probably produce more milk than her family can use. Also, she and others are interested in becoming "subsistence" farmers, and thus they need to be able to barter/exchange products. Furthermore, she expressed interest in sharing the aforementioned lifestyle with those interested who don't have the property to actually do it. Ms. Nelson related her appreciation for DEC wanting to protect the public, and then questioned why products couldn't be labeled to specify that they aren't DEC approved products.

[4:13:35 PM](#)

REPRESENTATIVE T. WILSON asked if these regulations will have a negative impact on 4-H projects.

MS. NELSON responded that she didn't know if it would have a negative impact, but the ability to recuperate some of the costs of a 4-H project would certainly be positive.

[4:14:10 PM](#)

LORI LANGE began by relating her support for the small family farm exemption. She informed the committee that she has six children, one husband, one dog, nine ducks, and five goats on one acre. She further informed the committee that the family drinks raw milk and have had no health issues. She noted that she makes cheese from the raw milk, but by the time the cheese is made it is pasteurized because it has been heated to a certain temperature. Six of eight of the family are lactose intolerant and it wasn't financially feasible to buy the various types of milks. She mentioned that since getting goats, lots of folks have asked for raw milk.

MS. LANGE then turned to the relationship between the consumer and the farmer, which is a relationship of trust. Nothing can tear that trust more than regulations. Personally, she said she is very upfront in her discussions regarding raw milk and cheese. She expressed the desire to be able to make back the money spent on the goats in order to eat for free. Ms. Lange related that one of her daughters did a science fair project in which she tested the levels of bacteria in milk. She tested store-bought cow milk, store-bought goat milk, and the farms' raw goat milk. The milk with the least bacteria was the whole

raw goat milk from her home. She then mentioned that the Oregon exemption is clear and well written while the proposed Alaska regulations seem to be unclear and confusing.

4:20:44 PM

CHAIR KELLER asked if statute prohibits DEC from explicitly providing the exemptions for small dairies. He then requested Ms. Ryan's explanation regarding whether such an exemption would be good/bad public policy.

MS. RYAN stated that all the comments heard today will be considered as decisions are made on the regulations. With regard to statute and exemptions, Ms. Ryan reminded the committee that food safety is regulated by the Food Safety, Drug, and Cosmetic Act, which is found in Title 17. The aforementioned basically requires the adoption of regulations and disallows the sale of dangerous products. The Department of Law would have to be contacted regarding whether it's allowable in statute for the department to allow the exemption of a product that could potentially contain dangerous products. With regard to whether an exemption would be a good public policy, Ms. Ryan said that she didn't know.

MS. RYAN clarified that the shares program is one in which those who own part of the animal are allowed to drink the raw milk. However, the cheese regulations don't currently have that caveat and may or may not when finalized. If the share program caveat was included in the cheese regulations, the owners of the animal from which the milk was used to make the cheese would be able to use it and be unregulated. Therefore, she surmised that since the caveat is already in existence for milk it would likely be legal to do so for cheese as well.

4:23:39 PM

REPRESENTATIVE GUTTENBERG opined that the cow-shares seem to be just a marketing way to work around the regulations. The exemptions, he pointed out, provide the same result.

MS. RYAN acknowledged the aforementioned, and pointed out that it was a decision made by DEC previous to her presence. Therefore, the department is obligated to honor it. She related her agreement with Representative Guttenberg that the cow-shares program is a work around the regulations. She characterized it as a slippery slope. With regard to the exemption suggestions by Ms. Ansley, Ms. Ryan pointed out that there is very little

she proposes that DEC wouldn't require in the permit. Beyond what Ms. Ansley is proposing, DEC's draft regulations require testing and a facility that meet certain standards. Ms. Ryan said that she didn't foresee DEC not requiring testing because it's an essential manner to ensure that all the processing is working appropriately. Those [testing requirements] are federal mandates as well as state mandates, and therefore she didn't foresee the state wanting it to be different in Alaska. Ms. Ryan opined that the [proposed] regulations are accessible and the requirements can fit a small operation. Furthermore, the department is willing to be as accommodating as possible as is evidenced by the Buckwater's dairy and others.

[4:27:08 PM](#)

REPRESENTATIVE GUTTENBERG asked if Ms. Ryan is familiar with the difference between fluid milk and manufacturing milk. He then asked if Ms. Ryan is opposed to doing what is nationally done for cheese. He pointed out that very little pasteurization [requirements] apply to cheese that is manufactured outside of Alaska that is brought into Alaska.

MS. RYAN said that she is familiar with those. She then highlighted that the regulations in Alaska do allow the use of Grade B milk to make cheese. The proposal for the exemption that included all milk be pasteurized won't be acceptable for those who do not want to pasteurize their cheese but rather want to age their cheese to accomplish the same effect as pasteurization. The draft regulations tried to accommodate the various ways in which cheese is currently being made.

[4:28:45 PM](#)

CHAIR KELLER explained that the regulations are being reviewed for intent and potential legislation in the future.

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REPRESENTATIVE T. WILSON asked if the exemption would be better if it addressed only cheese staying within the state.

MS. RYAN replied no, and added that so far most all cheese made in the state stays in the state.

REPRESENTATIVE T. WILSON inquired as to the number of folks who get sick from cheese.

MS. RYAN said that although people get sick and die from eating bad food, she wasn't aware of any outbreak in Alaska. However, this is the first time [folks in the state] have ventured into cheese processing.

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REPRESENTATIVE T. WILSON recalled that there was testimony that people have manufactured cheese, but it hasn't been regulated. Therefore, she related her understanding that illnesses [due to unhealthy cheese] would've been reported through hospitals or doctors.

MS. RYAN clarified that no one was making cheese and selling it commercially prior to the dairies that DEC permitted.

REPRESENTATIVE T. WILSON related her understanding that cheese is being made throughout state, whether it's given away or sold. Therefore, it seems that if there was a large need for this, then everyone would've heard about those who were getting sick from homemade cheese. "Wouldn't that have to be reported," she asked.

MS. RYAN highlighted that food-borne illness is severely underreported. In fact, about 1 in 25 cases are learned about. If an individual sees a doctor, is tested and diagnosed, certain diseases are reported. The regulations were drafted in order to offer protection. Furthermore, there is a public expectation that if one pays for something, it will be safe. The cases in which there have been outbreaks, the lawsuits have been tremendous and placed families in horrible situations. Therefore, the department is also concerned about the risk to the providers.

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SENATOR OLSON inquired as to the number of lawsuits filed related to food-borne illness for smaller organizations. He expressed concern that the state is over regulating smaller operations, which is something that he doesn't necessarily favor.

MS. RYAN said that she isn't implying that there are such lawsuits in Alaska, but rather that there are such lawsuits in other states. Although she said she knew of folks who had been hurt by food-borne illness, she didn't recall that they filed lawsuits.

SENATOR OLSON opined that food-borne illnesses are something that is dealt with daily.

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MS. RYAN asked if Senator Olson believes the cow-share program is an acceptable risk.

SENATOR OLSON said that he has only just heard of the cow-share program.

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JAY FULLER, DVM, Assistant State Veterinarian, Department of Environmental Conservation, recalled that during the public comment period a teleconference was held in Fairbanks during which the major concern seemed to be with the eight-room requirement and the water and sewer requirement. The regulations never intended to disallow private septic and wells. Although the regulations don't disallow the aforementioned, the department will qualify that, with DOL's help, if it's determined necessary to do so. With regard to the eight-room requirement, the department intends to work with the language to allow the double use of some rooms. However, rooms such as a bathroom can't be the same room as a processing room. Dr. Fuller opined that there is a great misconception that somehow cheese is allowed to be made under little or no regulation in other places. The aforementioned argument is typically used in conjunction with the desire to purchase artisan cheeses. The regulations, as drafted, allow the production of cheese from raw milk as well as pasteurized milk that is less than Grade A milk. Dr. Fuller opined that he doesn't see any more liberal regulation for the production of cheese in other states. With regard to food-borne illness, cheese does cause illness. In fact, eight individuals recently died in Austria due to listeria in cheese. Therefore, cheese does present a food-borne illness threat similar to milk. He then turned to the cow-share program, which he acknowledged gets around the regulation prohibiting the sale of raw milk in Alaska. He then informed the committee that all states test cheese, but do so at varying levels. Sometimes the federal government will select plants in which to test. Dr. Fuller said that there aren't any interstate rules regarding cheese. Therefore, theoretically cheese made in Alaska could be sold in another state, whereas milk has to meet the PMO to cross state lines. Cheese doesn't have to meet [the PMO or anything similar] to cross state lines.

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REPRESENTATIVE T. WILSON questioned then why not all cheese coming into the state would be tested.

MS. RYAN explained that the state in which the cheese is manufactured is the state where it's required to ensure it's done safely. Therefore, Alaska is obligated to ensure that cheese in Alaska is safe.

REPRESENTATIVE T. WILSON maintained that if this testing is for safety, it would seem all cheeses entering the state would be randomly tested. If the desire is to have one standard of testing, wouldn't it make sense to test all cheese, she asked.

MS. RYAN answered that if there was a budget to do so, it could be done. At this point, Alaska has accepted the standards from other states as acceptable and equivalent to Alaska's standards. She said that the department will review Alaska's testing requirements again, in comparison to other states.

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CHAIR KELLER related his preference for the regulations to include direct and specific exemptions rather than regulations that are exempted for each dairy specifically. He suggested that the aforementioned would likely avoid trouble in the future. He further suggested that exemptions can be addressed with labeling and advertising requirements.

**Review of regulations (11 ACC 65.010 - 11 ACC 65.900) relating to personal use cabin permits**

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CHAIR KELLER announced that the next order of business would be regarding regulations relating to personal use cabin permits.

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DICK MYLIUS, Director, Division of Mining, Land, & Water, Department of Natural Resources (DNR), related that he will review the three matters he understands to be of most interest. With regard to the personal use cabin permit program and the related regulations as well as the cabins on federal land that are being transferred to the state, he highlighted that most of

those cabins weren't authorized to be constructed. There are likely hundreds of unauthorized cabins on state land. The construction of new [unauthorized] cabins on state land is discouraged by having land sale programs, which is the preferred manner in which to offer Alaskans land for the construction of cabins. Generally, the trespass uses, he noted, aren't addressed because there are so many. The trespass uses that impact access, situations in which the unauthorized cabin owners are exerting ownership or excluding others from the land around the trespass cabins, causing impacts on habitat or hunters, or blatant violations such as living on the land in the unauthorized cabin year round are addressed. If possible DNR attempts to make the unauthorized cabin legitimate, but often the department is unable to do so because most of the cabins are trespassing. Furthermore, most of the state's land sale programs and permitting programs are supposed to provide equal opportunity to all Alaskans. The programs, he said, aren't supposed to give a preference to the individual who constructed his/her cabin on state/federal land without authorization. If the aforementioned were the case, folks would build a cabin wherever they wanted. Therefore, the legislature established the personal use cabin program to legitimize certain cabins.

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MR. MYLIUS then provided the committee with backup material. The document entitled "Personal Use Cabin Permits Overview for the Administrative Regulation Review Joint Committee Division of Mining, Land and Water March 8, 2010" is a summary of the program. He informed the committee that the Personal Use Cabin Permit (PUCP) program dates from 1984, when there was a fairly thorough effort from the legislature, DNR, the Alaska Department of Fish & Game (ADF&G), and the governor at the time to sort out a number of land management issues, including dealing with these cabins. Many of the cabins were in areas set aside by the legislature as game refuges, which is where the term "duck shack" arose. The intention of the PUCP program was not to be a land disposal program or a program to segregate the title. The PUCP program was to authorize the existing cabins for the lifetime of the owner. At the same time, the legislature passed a law allowing a remote cabin program. However, that program was never funded and was subsequently repealed by the legislature in 1997 when the Remote Recreational Cabin program was instituted, which is actually a stake-it-yourself land sale program for land sales in remote areas. The Remote Recreational Cabin program was not funded until 2001 and remains a way in which to get cabin sites available to the public. The focus of

the aforementioned program is to get cabins into ownership so that there aren't situations in which people are concerned about their cabins going away because the land is owned by them permanently.

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MR. MYLIUS explained that the regulations for the PUCP program created a narrow scope that allowed for use of cabins and rules regarding how the cabins would be authorized. The intent of the regulations was to phase out the use of these cabins on state land and eventually convert them to public use. The regulations don't allow for additions or enlargements; require preauthorization for building a destroyed or damaged structure; provide that the permits are good for six years; allow for renewals every six years; require that an application be submitted 90-180 days prior to the expiration of the permit; and permits are only valid during the lifetime of the original holder of the permit. Due to the last regulation requirement, folks often used the youngest person in the family. The permittee had to be at least 18 years of age. He noted that often these permits had multiple permittee names listed. He informed the committee that initially 355 of these permits were granted, of which 241 are still active. Some of the permits have been closed while others have become inactive. Currently, seven are under appeal. For many years, the department didn't enforce the regulation that requires the application be submitted 90-180 days prior to the expiration of the permit. Over time, people accepted [and expected] that DNR would ignore that regulation. However, this year DNR decided to [follow the regulation]. The [renewal] letters are sent out via certified mail, and the letters sent for the June applications as well as the most recent applications specified that DNR would enforce the regulation. He opined that one of the reasons the legislature has heard from folks is because they became accustomed to DNR not enforcing the aforementioned regulation and object to DNR enforcing it. In the summer program, 12 applicants were denied permits and they appealed those decisions to the commissioner, who decided to reinstate those permits because she felt the applicants hadn't been given adequate notice regarding the change in regulations. However, the commissioner's decision on those appeals specified that the regulations would follow the regulations and notify individuals specifically that they have to apply during the time period stated in the regulations and late applications won't be considered. Currently, there are a number of folks who assumed that late applications would be taken, but thus far only one has

filed an appeal. He noted that there are also six appeals from folks who overbuilt when rebuilding their cabin. The rebuilding occurred due to a large fire that burned through the Caribou Hills area on the Kenai Peninsula. Those who applied to rebuild were approved with the stipulation that they had to maintain the same size of the cabin.

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MR. MYLIUS then directed the committee's attention to the copy of the regulations in the committee packet. He highlighted 11 AAC 65.040 regarding the renewal timeframe for a personal use cabin permit. He also highlighted 11 AAC 65.090(E) regarding the prohibition against additions or enlargements to the cabin, except for routine maintenance and upkeep. He pointed out that the August 7, 2009, memorandum is an example of the advanced warning given to folks regarding the change in policy. The April 22, 2009, memorandum is the regional manager's decision to enforce the renewal timeframe regulation. The August 6, 2009, memorandum is the commissioner's decision on the appeals. The committee packet also includes a copy of the renewal application. The photos in the committee packet are two examples of cabins under appeal in which the original cabin was a one-story cabin while the newer cabin is [larger with multiple floors]. The committee packet includes a document entitled "Southcentral 2009 Denied Personal Use Cabin," which lists the personal use cabins in Southcentral that have been denied and specifies which were reinstated and which remain in the appeal process.

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SENATOR OLSON noted that the accusation by the public is that government, whether state or federal, will destroy [unauthorized] cabins. He inquired as to what happens to the [unauthorized] cabins once the application has been denied and the cabin comes into the possession of the state.

MR. MYLIUS explained that in the case of these [unauthorized] personal use cabins that are denied, the state requests removal of the cabin or structures. However, if the cabin is suitable for public use, it can be donated to ADF&G. The latter has been done in a few cases. In further response to Senator Olson, Mr. Mylius said that very few [unauthorized personal use cabins that have been denied permits] have been destroyed.

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SENATOR OLSON, drawing upon his experience in rural Alaska, pointed out that folks in rural Alaska use these cabins when their snow machine breaks down or a pilot crashes. Therefore, it would be a very dim situation when a cabin that could be used for shelter in an emergency situation is destroyed. Senator Olson emphasized that he, therefore, isn't willing to support the state destroying cabins.

MR. MYLIUS reiterated that the state has removed very few cabins. Furthermore, most of the cabins being discussed today are located near numerous cabins, including authorized cabins. The few that the state would remove are likely cabins that wouldn't be used for shelter. He noted that some of the cabins are nothing more than piles of garbage. As a responsible land manager, when the federal government transfers land to the state, the state wants legally clean title and land that's cleaned up. Moreover, the state doesn't have a program for managing those cabins as public use cabins. The state, Mr. Mylius clarified, wants to ensure that someone wants to take responsibility for maintaining the cabins in order to avoid any liability to the state.

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CHAIR KELLER highlighted that 11 AAC 65.010 specifies that the intent of this chapter is to phase out the use of unauthorized cabins on state land. Therefore, he understood that to mean that the state doesn't intend to maintain cabins. He then said that he could identify with Senator Olson's comments. Chair Keller asked if anything in statute prevents the state from taking these unauthorized cabins and going through another phase rather than phase out the cabins.

MR. MYLIUS explained that for the [unauthorized] cabins on BLM lands, the department has said that it will [permit] cabins if they can find a group to take responsibility for the cabins. He highlighted the Mat-Su Motor Musers, which is working on obtaining authorization of and responsibility for a cabin on the west side of Hatcher Pass, is a good example of the aforementioned. Mr. Mylius clarified that the cabins under discussion today aren't available for public use, although they can be used as emergency shelters. These are cabins that were built by private individuals who claim that they are privately owned cabins. However, these cabins weren't built with any authorization. The department doesn't have any statutory programs, other than the personal use cabin program of 1984,

that would allow the authorization of the continued use of private cabins built in trespass for continued private use. The department, he reiterated, does have the ability to permit these cabins for public use. With regard to the suggestion to allow these [unauthorized] cabins to be donated to the state, the state doesn't have the resources to manage or maintain those cabins.

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CHAIR KELLER reminded everyone that this meeting is an attempt to obtain information in order to determine whether a statutory fix is necessary.

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REPRESENTATIVE GATTO recalled that many Hatcher Pass cabins were designated as mining claims, although no mining was occurring or claims being processed. At some point, those cabins disappeared. He asked if the department was part of the [removal of those cabins at Hatcher Pass].

MR. MYLIUS replied yes, adding that it was a situation in which the state aggressively addressed the trespass cabins. He explained that people with cabins were claiming to have mining claims. There were lots of complaints from the public due to the impact on public use of the area. He characterized the situation as an abuse of state lands, which are the types of trespass situations the department addresses aggressively.

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CHAIR KELLER announced that the committee would continue this discussion at a later date.

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#### **ADJOURNMENT**

There being no further business before the committee, the Administrative Regulation Review Committee meeting was adjourned at 5:07 p.m.